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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 TRAVIS D. BRACKEN,

9 Plaintiff,

10 v.

11 STATE WASHINGTON DOC MEDICAL,

12 Defendant,

CASE NO. C17-736 RAJ-BAT

**REPORT AND  
RECOMMENDATION**

13 Before the Court is defendants' motion to dismiss and to compel discovery. Dkt. 16. Mr.  
14 Bracken who is not currently a prisoner has not responded to the motion, or communicated with  
15 the Court in any other way. Accordingly, for the reasons below, the Court recommends  
16 defendants' motion, Dkt. 16, be **GRANTED** and the case be **DISMISSED** without prejudice.

17 **BACKGROUND**

18 On May 10, 2017, Mr. Bracken who was then a prisoner of the State of Washington filed  
19 a pro se complaint under 42 U.S.C. § 1983. Dkt. 1. On May 25, 2017, Mr. Bracken filed a letter  
20 updating his address to 12402 Admiralty Way. Apt. D-106, Everett, WA 98204. Dkt. 9. On  
21 October 19, 2017 defendants filed a motion to dismiss contending it mailed discovery requests to  
22 Mr. Bracken using his updated address on August 30, 2017, but the requests were returned on  
23 September 25, 2017, as "unclaimed." Dkt. 16, 17. Defendant further contends it sent Mr.

1 Bracken a certified letter on October 5, 2017, requesting he answer the interrogatories and  
2 contact defendant for a Rule 37 conference, but that he failed to respond to the letter. *Id.*  
3 Defendant also contends the October 5, 2017, letter was returned as “not deliverable, unable to  
4 forward.” Dkt. 19 at 1. Given these events, defendant argues the Court should order Mr. Bracken  
5 to respond to its discovery requests by November 13, 2017, and should dismiss the case because  
6 “it appears that the address [Mr. Bracken] provided to the Court and opposing counsel is no  
7 longer a valid address.” Dkt. 16 at 2.

## 8 **DISCUSSION**

9 Mr. Bracken’s unresponsiveness to defendants’ attempts raises two separate but  
10 intertwined questions. First, should the Court dismiss the case because Mr. Bracken failed to  
11 apprise the Court and opposing counsel that he has had a change of address? Under Local Civil  
12 Rule (“LCR”) 10(f) Mr. Bracken must notify the Court of any address change within 10 days of  
13 the change. LCR 41(b)(2) further provides:

14 A party proceeding pro se shall keep the court and opposing parties advised as to  
15 his or her current mailing address and, if electronically filing or receiving notices  
16 electronically, his or her current email address. If mail directed to a pro se  
17 plaintiff by the clerk is returned by the Postal Service, or if email is returned by  
18 the internet service provider, and if such plaintiff fails to notify the court and  
19 opposing parties within 60 days thereafter of his or her current mailing or email  
20 address, the court may dismiss the action without prejudice for failure to  
21 prosecute.

22 Here, Mr. Bracken notified the Court in May 2017 of a change of address which indicates  
23 he is aware of the requirements of LCR 41(b)(2). Defendants’ August 30, 2017 discovery request  
was returned as “unclaimed” and defendants’ October 5, 2017, letter was returned as  
undeliverable. As such, there is a sufficient basis for the Court to conclude Mr. Bracken has  
changed his address and failed to notify the Court or defendants.

1           Given the conduct defendants allege, the Court may also consider whether the case  
2 should be dismissed for lack of prosecution. The district court has the inherent power to dismiss  
3 a case for lack of prosecution. *Kriege v. State of Hawai'i Consumer Protection Division*, No. 16-  
4 324, 2017 WL 2703771 at \* 2 (D. HI. June 2, 2017) citing *Ash v. Cvetkov*, 739 F.2d 493, 496  
5 (9th Cir. 1984). In determining whether to dismiss an action for lack of prosecution, the Court  
6 weighs several factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the  
7 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
8 policy favoring disposition of cases on their merits and (5) the availability of less drastic  
9 sanctions.” *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) citing *Henderson*  
10 *v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

11           Here, Mr. Bracken’s failure to communicate diminishes the public interest in expeditious  
12 resolution and the court’s need to manage its docket. He is required to update his address. If he  
13 has moved without advising anyone, his case should be dismissed under LRC 41(b)(2). If Mr.  
14 Bracken has not moved and is disregarding defendants’ discovery requests and request to confer  
15 on the matter, he is preventing the case from going forward in any meaningful way. A plaintiff  
16 cannot sue a defendant and refuse to provide discovery to the defendant, thereby leaving the  
17 defendant in the dark and unable to mount a defense. This of course prejudices the defendant,  
18 and prevents the court from managing its docket, or resolving the case.

19           The Court has considered whether less drastic sanctions are available and concludes there  
20 are none. Defendant has twice attempted to communicate with Mr. Bracken without success.  
21 Defendant has sought discovery without any response. Defendant has moved to dismiss and Mr.  
22 Bracken has not responded. Mr. Bracken might have reasons for his lack of prosecution but the  
23 Court cannot ascertain what they might be due to his lack of communication. The Court deems it

1 inappropriate to hold a case in suspended animation just because it does not know, through the  
2 plaintiff's lack of communication, why plaintiff is not properly prosecuting his lawsuit.

3 In sum, having weighed the five factors regarding whether to dismiss, the court concludes  
4 that it is also appropriate to dismiss the case for lack of prosecution. Because a dismissal would  
5 moot defendants' request to compel discovery, the Court need not address that request at length,  
6 other than to recommend that if Mr. Bracken objects to the Report and Recommendation, and if  
7 the Court does not dismiss the action, the Court should grant defendants' discovery request and  
8 require Mr. Bracken to provide responses to the requests no later than two weeks following the  
9 District Court's order regarding this report and recommendation.

### 10 **OBJECTIONS AND APPEAL**

11 This Report and Recommendation is not an appealable order. Therefore a notice of  
12 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
13 assigned District Judge enters a judgment in the case. Objections, however, may be filed and  
14 served upon all parties no later than **November 23, 2017**. The Clerk should note the matter for  
15 **November 24, 2017**, as ready for the District Judge's consideration if no objection is filed. If  
16 objections are filed, any response is due within 14 days after being served with the objections. A  
17 party filing an objection must note the matter for the Court's consideration 14 days from the date  
18 the objection is filed and served. The matter will then be ready for the Court's consideration on  
19 the date the response is due. Objections and responses shall not exceed eight (8) pages. The  
20 failure to timely object may affect the right to appeal.

21 DATED this 9th day of November, 2017.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge

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